

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CONNIE ERICKSON and
WILLIAM L. ERICKSON,

Plaintiff,

v.

Case No. 10-C-883

CREDIT SYSTEMS OF THE
FOX VALLEY, INC.,

Defendant.

ORDER

On November 15, 2011, the Court ordered counsel for the plaintiffs in the above matter to show cause why costs of assembling a jury should not be imposed when his clients failed to appear on the first day of trial. The case was dismissed as a sanction as a result of their failure to appear. The Court nevertheless entered the Order to Show Cause to determine whether the fees and costs of assembling the jury should be imposed on counsel as an additional sanction. The Court, in the course of its order, indicated that counsel's failure to discover that his client did not intend to appear was at least negligent. More ominously, the Court suggested that the failure to notify the Court and counsel of his clients' intent not to appear could have been a settlement tactic.

Counsel has now responded and, based upon his submission, the Court concludes that costs will not be imposed. Though questions remain, it appears from counsel's submission that the failure of his clients to appear was a mix-up that was unprecedented and unforeseen by counsel. The Court is unaware of any previous history by counsel or his firm engaging in improper conduct and

declines to impose a sanction, beyond a dismissal already ordered, under the circumstances of the case. The costs of assembling the jury would have been incurred even if his clients had appeared. Indeed, had the trial lasted more than a day, the costs would have been greater. Given these facts, and absent a history of such conduct or evidence that the failure to notify the court and opposing counsel earlier was a settlement tactic, the sanction of dismissal is sufficient. Accordingly, the additional costs of the assembly of the jury will not be imposed.

SO ORDERED this 19th day of December, 2011.

s/ William C. Griesbach
William C. Griesbach
United States District Judge